

CHAPTER 215

HB 1554 – FINAL VERSION

18Mar2010... 0951h

05/12/10 2040s

2010 SESSION

10-2202

09/10

HOUSE BILL ***1554***

AN ACT allowing municipalities to establish energy efficiency and clean energy districts.

SPONSORS: Rep. Pastor, Graf 9; Rep. Borden, Rock 18; Rep. F. Holden, Hills 4; Rep. R. Read, Rock 16; Rep. Rappaport, Coos 1; Sen. Fuller Clark, Dist 24; Sen. Merrill, Dist 21; Sen. Houde, Dist 5; Sen. Reynolds, Dist 2

COMMITTEE: Municipal and County Government

ANALYSIS

This bill allows municipalities to establish energy efficiency and clean energy districts.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT allowing municipalities to establish energy efficiency and clean energy districts.

Be it Enacted by the Senate and House of Representatives in General Court convened:

215:1 Findings and Purpose. The general court finds that:

I. Energy conservation and efficiency and clean energy improvements to residential, commercial, industrial, and other buildings and facilities are necessary to:

(a) Protect the economic and social well-being of New Hampshire communities by reducing the cost of fuel oil, electricity, natural gas, propane, and other forms of energy, and the risks associated with future escalation in energy prices;

(b) Protect the economic and social well-being of New Hampshire communities by encouraging investment in the development and implementation of energy conservation and efficiency and clean energy improvements; and

(c) Address the threat of global climate change.

II. The upfront cost of energy conservation and efficiency and clean energy improvements prevents many property owners from making such improvements.

III. To achieve the public benefits of reducing the cost of energy use and the risks associated with future escalation in energy prices, encouraging investment in the development and implementation of energy conservation and efficiency and clean energy improvements, and addressing the threat of global climate change, it is necessary to authorize a procedure for enabling property owners, on a voluntary basis, to finance such improvements and make repayments in the form of special assessments on their property tax bills or municipal service bills.

IV. The purposes of this chapter are to authorize municipalities to establish such a procedure and to set forth requirements to ensure that its use will achieve the intended purposes of improving the social and economic well-being of New Hampshire communities and reducing greenhouse gas emissions.

215:2 New Chapter; Energy Efficiency and Clean Energy Districts. Amend RSA by inserting after chapter 53-E the following new chapter:

CHAPTER 53-F

ENERGY EFFICIENCY AND CLEAN ENERGY DISTRICTS

53-F:1 Definitions. In this chapter:

I. "Clean energy improvement" means the installation of any system on the property for producing electricity for, or meeting heating, cooling, or water heating needs of the property, using either renewable energy sources, combined heat and power systems, or district energy systems using wood biomass (but not construction and demolition waste) or natural gas. Such improvements include but are not limited to solar photovoltaic, solar thermal, wood biomass, wind, and geothermal systems, provided that, to be covered by an agreement with a property owner and financed under this chapter, such improvements shall be qualifying improvements under RSA 53-F:6.

II. "District" means an energy efficiency and clean energy district established under this chapter.

III. "Energy conservation and efficiency improvements" means measures to reduce consumption, through conservation or more efficient use, of electricity, fuel oil, natural gas, propane, or other forms of energy on the property, including but not limited to air sealing, installation of insulation, installation of heating, cooling, or ventilation systems meeting or exceeding ENERGY STAR standards, building modifications to increase the use of daylighting, replacement of windows with units meeting or exceeding ENERGY STAR standards, installation of energy controls or energy recovery systems, and installation of efficient lighting equipment, provided that, to be covered by an agreement with a property owner and financed under this chapter, all such improvements must be permanently affixed to a building or facility that is part of the property and shall be qualifying improvements under RSA 53-F:6.

IV. "Municipality" means any city, town, or village district.

V. "Property owner" means the owner of record of real property within the boundaries of the district, whether zoned or used for residential, commercial, industrial, or other uses.

VI. "Special assessment" means a special assessment within the meaning and subject to the provisions of RSA 80:19.

53-F:2 Adoption By Municipality. A city, town, or village district may adopt the provisions of this chapter in the following manner:

I. In a town, other than a town that has adopted a charter pursuant to RSA 49-D, the question shall be placed on the warrant of an annual meeting only by the governing body, and not pursuant to RSA 39:3.

II. In a city or a town that has adopted a charter pursuant to RSA 49-C or RSA 49-D, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of any such municipality may vote to place the question on the official ballot for any regular municipal election.

III. In a village district, the question may be considered and acted upon by any means authorized by RSA 52.

IV. The language of the question shall designate an energy efficiency and clean energy district, which may cover all or a portion of the area within the municipality, or may designate all or a portion of the area within the municipality as part of an energy efficiency and clean energy district that encompasses all or portions of multiple municipalities.

V. A municipality may vote to rescind its action in the same manner as it may vote to adopt, provided that all agreements entered into with property owners and related legal obligations created prior to its vote to rescind shall remain in effect.

53-F:3 Authority. To achieve the public benefits of protecting the economic and social well-being by reducing energy costs in the community and risks to the community associated with future escalation in energy prices, and addressing the threat of global climate change, any municipality which has adopted the provisions of this chapter and established an energy efficiency and clean energy district may, upon a finding by the governing body of the municipality, after notice and hearing, that the energy conservation and efficiency and clean

energy improvements the municipality will finance pursuant to this chapter will serve the public purposes as set forth in this chapter and not primarily be for the benefit of private persons or uses even though such private benefits and uses may incidentally result, do the following:

I. Incur debt for the purpose of providing financing to property owners within the district, including through issuance of municipal bonds, Qualified Energy Conservation Bonds or Clean Renewable Energy Bonds. Any such debt shall constitute a pledge of the municipality's full faith and credit, and except as may be otherwise provided in this chapter, shall be subject to the provisions of RSA 33.

II. Establish a revolving fund pursuant to RSA 31:95-h using general municipal revenues, bond funds, federal Energy Efficiency and Conservation Block Grant funds, or grant funds from any federal, state, private, or other source, provided that the use of general municipal revenues shall be pursuant to an appropriation by special warrant article in accordance with RSA 32 and the municipality's appropriation procedures.

III. Provide financing for qualifying improvements to eligible property owners within the district.

IV. Collect from property owners payments on assessments used to finance qualifying improvements.

V. Establish reserve accounts, as provided in RSA 53-F:7.

VI. Participate in state or federal programs providing support for municipal energy efficiency and clean energy finance programs such as those authorized by this chapter, including guarantee, loss reserve, revolving fund, or other state or federal support programs.

VII. Enter into agreements with property owners in which the property owners consent to make energy conservation and efficiency improvements or clean energy improvements to their property and to have the municipality include a special assessment to pay for such improvements on their property tax bills, their bills for water or sewer service or another municipal service, or separate bills, provided that such agreements shall not affect the tax liability or municipal services charges of other participating or nonparticipating property owners in the district.

VIII. Collect charges from participating property owners to cover the cost of administration for the district.

IX. Otherwise administer a program for promoting and financing energy efficiency and clean energy improvements within a district in accordance with this chapter, enter into an agreement with a public or private entity to administer such a program on its behalf in accordance with this chapter, and enter into an agreement with one or more other municipalities to share services and otherwise cooperate in the administration of a district or districts in accordance with this chapter.

53-F:4 Agreements with Property Owners.

I.(a) A municipality may make an assessment under this chapter only pursuant to an agreement entered into with the free and willing consent of the owner of the property to which

the assessment applies. In the case of any property with multiple owners, an agreement under this chapter shall be signed by all owners.

(b) An agreement with a property owner shall provide that the owner shall contract for qualifying improvements with one or more qualified contractors, purchase materials to be used in making qualified improvements, or both, and that, upon submission of documentation required by the municipality, the municipality shall disburse funds to those contractors and vendors in payment for the qualifying improvements or materials used in making qualified improvements. An agreement with a property owner shall require that the property owner report post-installation energy use data for program evaluation purposes over a period determined by the municipality.

(c) The agreement shall be in writing and shall include a payment schedule showing the term over which payments will be due on the assessment, the frequency with which payments will be billed and amount of each payment, and the annual amount due on the assessment. Upon full payment of the amount of the assessment, including all outstanding interest and charges and any penalties that may become due, the municipality shall provide the participating property owner with a written statement certifying that the assessment has been paid in full.

II. The municipality shall disclose to participating property owners the risks associated with participating in the program, including risks related to their failure to make payments and the risk of enforcement of property tax or special assessment liens under RSA 80:19.

III. At least 30 days prior to entering into an agreement with a municipality under this chapter, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the agreement.

IV. The municipality shall file a notice of the assessment under this chapter for recording in the county registry of deeds. The notice shall consist of the following statement or its substantial equivalent: "This property is subject to a special assessment related to the installation of qualifying cost-effective energy conservation and efficiency improvements or clean energy improvements under RSA 53-F."

V. Any personal financial information provided to a municipality or an entity administering a program under this chapter on behalf of a municipality by a participating property owner or potential participating property owner shall be confidential and shall not be disclosed to any person except as required to administer the program and only on a need-to-know basis.

53-F:5 Eligibility of Property Owners.

I. A municipality may enter into an agreement under this chapter only with the legal owner of real property.

II. Prior to entering into an agreement with a property owner, the municipality shall determine that all property taxes and any other assessments levied with property taxes are current and have been current for 3 years or the property owner's period of ownership, whichever is less; that there are no involuntary liens such as mechanic's liens on the property; and that no notices of default or other evidence of property-based debt delinquency have been recorded during the past 3 years or the property owner's period of ownership, whichever is less; and that the property owner is current on all mortgage debt on the property. The

municipality shall adopt additional criteria, appropriate to property-assessed clean energy finance programs, for determining the creditworthiness of property owners.

53-F:6 Qualifying Improvements.

I. Improvements financed pursuant to an agreement under this chapter shall be based upon an audit performed by a person who has been certified as a building analyst by the Building Performance Institute or who has obtained other appropriate certification as determined by the public utilities commission or another appropriate New Hampshire-based entity. The audit shall identify recommended energy conservation and efficiency and clean energy improvements; provide the estimated energy cost savings, useful life, benefit-cost ratio, and simple payback or return on investment for each improvement; and provide the estimated overall difference in annual energy costs with and without recommended improvements. Financed improvements shall be consistent with the audit recommendations. The cost of the audit may be included in the total amount financed under this chapter.

II. Improvements shall be permanently affixed to an existing building or facility that is part of the property. An agreement between a municipality and a qualifying property owner may not cover projects in buildings or facilities under new construction.

III. Improvements shall be made by a contractor or contractors, which may include a cooperative or not-for-profit organization, determined by the municipality to be qualified to make the energy efficiency or clean energy improvements in the agreement. A municipality may accept a designation of contractors as qualified made by an electric or gas utility program or another appropriate New Hampshire-based entity. Any work requiring a license under any applicable law shall be performed by an individual holding such license. A municipality may elect to permit the financing pursuant to an agreement under this chapter of improvements made by the owner of the property, but shall not permit the value of the owner's labor to be included in the amount financed.

IV. A municipality shall require, prior to disbursement of final payments to any contractor or vendor pursuant to an agreement with a property owner, submission by the property owner in a form acceptable to the municipality of:

(a) A post-installation report, based on an independent inspection acceptable to the municipality, certifying that improvements have been installed properly and verifying that they are performing satisfactorily; and

(b) Documentation of all costs to be financed and copies of any required permits.

53-F:7 Financing Terms.

I. Improvements shall be financed pursuant to an agreement under this chapter only on terms such that the property owner experiences a positive cash flow impact during the first year and the total energy cost savings realized by the property owner and the property owner's successors during the useful lives of the improvements are expected to exceed the total cost to the property owner and the property owner's successors of the improvements. In determining the amount that may be financed pursuant to an agreement under this chapter, the total amount of all rebates, tax credits, grants, and other financial assistance received by the owner on account of the improvements shall be deducted from the cost of the improvements.

II. A municipality that provides financing to participating property owners shall establish a loss reserve account and maintain funds in such account at a level that meets generally accepted standards for property-assessed clean energy finance programs.

III. The total amount of assessments for a property under this chapter shall not be less than \$5,000 and shall not exceed \$35,000 in the case of a single-family residential property or \$60,000 in the case of a commercial, industrial, or multifamily residential property, or 15 percent of the assessed value of the property multiplied by the municipality's current equalization ratio, whichever is less. The combined amount of assessments under this chapter, any outstanding mortgage obligations for the property, and any other outstanding debt attached to the property shall not exceed 85 percent of the assessed value of the property multiplied by the municipality's current equalization ratio. A property owner who escrows property taxes with the holder of a mortgage on a property subject to an agreement under this chapter may be required by the holder to escrow amounts due on the assessment under this chapter and the mortgage holder shall remit such amounts to the municipality in the manner that property taxes are escrowed and remitted.

IV. The maximum term of finance provided pursuant to an agreement under this chapter shall be 20 years. The term shall in no case exceed 85 percent of the average expected useful life of all improvements, weighted by cost. Expected useful lives used for all calculations under this chapter shall be consistent with the expected useful lives of energy conservation and efficiency and clean energy measures approved by the public utilities commission for utility or other programs.

53-F:8 Collection and Enforcement. Collection of assessments under this chapter shall be made by the tax collector or other official responsible for property tax or municipal service charge collection. A municipality shall commit bills for amounts due on the assessments, including interest and any charges, to the tax collector with a warrant signed by the appropriate municipal officials requiring the tax collector to collect them. Bills for amounts due on the assessments shall coincide with bills for property taxes or municipal service charges and shall create a lien on the property pursuant to RSA 80:19. Enforcement powers for nonpayment shall be those provided under RSA 80 relative to property tax collection, including RSA 80:19. At the time of enforcement, only the past due balances of the assessment under this chapter, including all interest, charges, and penalties, shall be due for payment. Notwithstanding any other provision of law, in the event of a transfer of property ownership through foreclosure, collection by the municipality shall be limited to any past due balances and future payments shall neither be accelerated nor extinguished by foreclosure. Payment of a past due balance from the loss reserve established under this chapter shall not relieve a participating property owner from the obligation to pay that amount.

215:3 Financing of Energy Conservation and Efficiency and Clean Energy Improvements by Property Owners. Amend RSA 31:95-h, I(d) and (e) to read as follows:

(d) Creating affordable housing and facilitating transactions relative thereto; ~~(e)~~

(e) Providing cable access for public, educational, or governmental use[-]; **or**

(f) Financing of energy conservation and efficiency and clean energy improvements by participating property owners in an energy efficiency and clean energy district established pursuant to RSA 53-F.

215:4 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 28, 2010

Effective Date: August 27, 2010